AS TO THE ADMISSIBILITY OF

Application No. 16875/90
by G.
against Switzerland

The European Commission of Human Rights sitting in private on 10 October 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 4 July 1990 by G. against Switzerland and registered on 17 July 1990 under file No. 16875/90;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Swiss citizen born in 1953, is a lawyer residing at A. in the Canton of Basel-Landschaft in Switzerland.

Since 1984 the authorities of the Canton of Aargau have been conducting criminal investigations against the applicant in connection with the bankruptcy of a company in Aargau. On 10 May 1984 the applicant was indicted before the Brugg District Court (Bezirksgericht) inter alia of the offence of fraud.

On 18 October 1989 the District Attorney's Office (Bezirksanwaltschaft) at Uster in the Canton of Zurich informed the applicant that criminal proceedings had been instituted against him on suspicion of false accusation by filing certain criminal denunciations (Strafanzeigen). On 4 January 1990 the Uster District Attorney's Office requested the authorities of the Canton of Basel-Landschaft to continue the investigations as the offence at

issue had been committed there. Following an exchange of opinions, the District Office (Statthalteramt) at Arlesheim in the Canton of Basel-Landschaft assumed jurisdiction with regard to the offence of false suspicion, whereas the Public Prosecutor's Office (Staatsanwaltschaft) of the Canton of Aargau decided to continue the proceedings instituted in Aargau.

The applicant requested the Federal Court (Bundesgericht) to order that the authorities of the Canton of Basel-Landschaft or, alternatively, of the Canton of Zurich should conduct all the proceedings concerned.

According to Section 263 para. 3 of the Federal Code of Criminal Procedure (Bundesstrafprozessordnung), "the Indictment Chamber of the Federal Court may in the case of various concurring offences determine the jurisdiction in a way which deviates from what is provided in Section 350 of the Swiss Penal Code" ("Die Anklagekammer des Bundesgerichts kann die Zuständigkeit beim Zusammentreffen mehrerer strafbarer Handlungen anders als in Artikel 350 des Schweizerischen Strafgesetzbuches bestimmen."). Section 350 of the Penal Code states that, if a person is being prosecuted for offences committed at different localities, jurisdiction will fall to the authority of the locality where the offence leading to the most severe punishment has been committed; if all offences are threatened with the same punishment, jurisdiction falls to the authority where the investigations first commenced.

On 2 May 1990 the Indictment Chamber dismissed the request. It found that in determining jurisdiction the importance of a well functioning criminal procedure and the interests of the accused in a speedy and correct implementation of penal law had to be considered. The Indictment Chamber noted that the applicant had since 1984 not called in question the jurisdiction of the Aargau authorities until he had been informed of the proceedings concerning false accusation. This recent offence was threatened with a more severe punishment. Nevertheless, it did not call for the jurisdiction of the Canton of Basel-Landschaft in respect of all offences. Thus, the criminal denunciations had been written in Basel-Landschaft. Moreover, the applicant had already been indicted in the proceedings in Aargau. There was also no connection between the two offences. In view of the prospective expiration (Verjährung) of the proceedings the Indictment Chamber found it to be procedurally efficient (prozessual zweckmässig) to conduct the criminal proceedings against the applicant separately.

COMPLAINTS

The applicant complains that he is not being tried by a court "established by law" within the meaning of Article 6 para. 1 of the Convention. He alleges that Section 263 para. 3 of the Federal Code of Criminal Procedure leaves too big a margin of appreciation to the Indictment Chamber of the Federal Court when determining criminal jurisdiction.

THE LAW

The applicant complains that Section 263 para. 3 of the Federal Code of Criminal Procedure leaves too big a margin of appreciation to the Indictment Chamber of the Federal Court when determining criminal jurisdiction. For this reason, the criminal proceedings instituted against him are not being conducted before a "tribunal established by law" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

According to the Commission's case-law, it is the purpose of the requirement in Article 6 para. 1 (Art. 6-1) of the Convention that courts shall be "established by law" that the judicial organisation in a democratic society must not depend on the discretion of the

Executive, but that it should be regulated by law emanating from Parliament. However, Article 6 para. 1 (Art. 6-1) does not require the legislature to regulate every detail in this area by formal Act of Parliament if the legislature establishes at least the organisational framework for the judicial organisation (see Zand v. Austria, Comm. Report 12.10.78, D.R. 15 p. 80).

The Commission further notes that in the present case the jurisdiction concerning the offences with which the applicant was charged was originally established in the Canton of Aargau. There is no indication that the applicant contested this jurisdiction.

At a later stage in the proceedings concurring jurisdictions arose. However, Article 6 (Art. 6) of the Convention does not grant an accused the right to choose the jurisdiction of a court. Rather, in such circumstances the Commission's task is limited to examining whether reasonable grounds existed for the authorities to establish one of the various jurisdictions and whether their decision was lawful.

In the present case the Commission notes that the Indictment Chamber of the Federal Court was acting within the confines of Section 350 of the Swiss Penal Code which determines penal jurisdiction in the case of concurring offences and of Section 263 of the Federal Code of Criminal Procedure which grants the Indictment Chamber the possibility, with regard to concurring offences, to determine another jurisdiction.

Moreover, the Commission does not consider it unreasonable if the Indictment Chamber, when interpreting these provisions and determining the jurisdiction of the various courts, noted that the offence of false accusation was of recent date, and that in the interests of procedural economy and in view of the applicant's previous indictment in the Canton of Aargau, the proceedings should be conducted by two different authorities.

In these circumstances the Commission finds no indication that the criminal proceedings instituted against the applicant are not being conducted by a tribunal "established by law" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission

unanimously DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)